

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

James Zarian,
Plaintiff,

v.

Industrial Enterprises, a
California Limited Partnership;
Camie L. Booker; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff James Zarian complains of Defendants Industrial Enterprises,
a California Limited Partnership; Camie L. Booker; and Does 1-10
("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers
from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

2. Defendants Industrial Enterprises and Camie L. Booker owned the real
property located at or about 3043 S. Oak Street, Santa Ana, California, in
November 2016.

1 3. Defendants Industrial Enterprises and Camie L. Booker own the real
2 property located at or about 3043 S. Oak Street, Santa Ana, California,
3 currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for the
10 events herein alleged, or is a necessary party for obtaining appropriate relief.
11 Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 5. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 8. The Plaintiff went to the property in November 2016 to buy flowers at

1 A to Z Wholesale Floral and Supply (“A to Z”).

2 9. A to Z is a facility open to the public, a place of public accommodation,
3 and a business establishment.

4 10. Parking spaces are one of the facilities, privileges and advantages
5 offered by Defendants to patrons of A to Z.

6 11. Unfortunately, there was not a single compliant, accessible parking
7 space in the parking lot for use by persons with disabilities that complied with
8 the Americans with Disability Act Accessibility Guidelines (“ADAAG”) in
9 November 2016.

10 12. There is currently no compliant, accessible parking space that complies
11 with the ADAAG today.

12 13. Plaintiff alleges, on information and belief, defendants used to have an
13 accessible parking spaces in the parking lot serving A to Z but it was allowed to
14 fade or get paved over.

15 14. The defendants had no policy or procedure in place to maintain its
16 parking spaces so that they remained compliant and useable for persons with
17 disabilities in November 2016.

18 15. The defendants have no policy or procedure in place to maintain its
19 parking spaces so that they remain compliant and useable for persons with
20 disabilities currently.

21 16. This barrier was encountered by plaintiff and caused plaintiff difficulty
22 and frustration.

23 17. Plaintiff would like to return and patronize A to Z but will be deterred
24 from visiting until the defendants cure the violations.

25 18. The violations identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the
27 Department of Justice as presumably readily achievable to remove and, in fact,
28 these barriers are readily achievable to remove. Moreover, there are numerous

1 alternative accommodations that could be made to provide a greater level of
2 access if complete removal were not achievable.

3 19. Additionally, on information and belief, the plaintiff alleges that the
4 failure to remove these barriers was intentional because: (1) these particular
5 barriers are intuitive and obvious; (2) the defendants exercised control and
6 dominion over the conditions at this location and, therefore, the lack of
7 accessible facilities was not an “accident” because, had the defendants
8 intended any other configuration, they had the means and ability to make the
9 change.

10 20. Given the obvious and blatant violation, the plaintiff alleges, on
11 information and belief, that there are other violations and barriers on the site
12 that relate to his disability. Plaintiff will amend the Complaint to provide
13 proper notice regarding the scope of this lawsuit once he conducts a site
14 inspection. However, please be on notice that the plaintiff seeks to have all
15 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
16 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
17 he can sue to have all barriers that relate to his disability removed regardless of
18 whether he personally encountered them).

19 21. Plaintiff is and has been deterred from returning and patronizing A to Z
20 because of his knowledge of the illegal barriers that exist. Plaintiff will,
21 nonetheless, return to the business to assess ongoing compliance with the
22 ADA and will return to patronize A to Z as a customer once the barriers are
23 removed.

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
27 defendants (42 U.S.C. section 12101, et seq.)

28 22. Plaintiff repleads and incorporates by reference, as if fully set forth

again herein, the allegations contained in all prior paragraphs of this complaint.

23. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

24. Pursuant to 28 C.F.R., Part 36, Appendix D (herein after “1991 Standards”), section 4.1.2, and 36 C.F.R., Part 1191, Appendix B (herein after “2010 Standards”), section 208.2, if a business provides between 1 and 25

1 parking spaces, they must provide at least one handicap parking space that is
2 van accessible (having an eight foot access aisle).

3 25. Here, the defendants did not provide a single compliant, useable
4 accessible parking space in its parking lot.

5 26. A public accommodation must maintain in operable working condition
6 those features of its facilities and equipment that are required to be readily
7 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

8 27. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10 28. Given its location and options, plaintiff will continue to desire to
11 patronize A to Z but he has been and will continue to be discriminated against
12 due to the lack of accessible facilities and, therefore, seeks injunctive relief to
13 remove the barriers.

14
15 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
16 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
17 51-53)

18 29. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint.

21 30. Because the defendants violated the plaintiffs' rights under the ADA,
22 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
23 Code § 51(f), 52(a).)

24 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiffs, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:


4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act which damages provide for
9 actual damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit,
11 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

12
13 Dated: January 17, 2017

CENTER FOR DISABILITY ACCESS

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15 By: 
16 Russell Handy, Esq.
17 Attorneys for plaintiff
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